IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 23RD JULY 2007 / 1ST SRAVANA 1929

Bail Appl..No. 4436 of 2007()

CRIME NO.17/07 OF ADMIALY EXCISE RANGE.

PETITIONER/NOT AN ACCUSED

SHYJU, AGED 32 YEARS, S/O.PURUSHOTHAMAN,
NELLITHANATH HOUSE, SHENGULAM KARA,
VELLATHOOVAL VILLAGE, DEVIKULAM TALUK,
IDUKKI DISTRICT.

BY ADV. SRI.PADAYATTEE YELDO

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
EXCISE INSPECTOR, ADIMALY EXCISE RANGE,
REPRESENTED BY THE GOVT. OF KERALA,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 23/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4436 OF 2007

Dated this the 23rd day of July, 2007

ORDER

Application for anticipatory bail. The petitioner is not arrayed as an accused yet. The allegation is under the Kerala Abkari Act. The officials of the Narcotic Cell were engaged in the routine patrol duty on 5/7/07. A vehicle which was proceeding along the road was directed to be stopped. They did not stop the vehicle. The vehicle sped away. It was chased. The vehicle was abandoned and the miscreants took to their heels. The vehicle was examined. The Investigators got clue of three persons. The 1st accused is the registered owner of the vehicle. The details were available in the vehicle. The 2nd accused is a person whose medical record was found to be available in the vehicle. He was thus arrayed as an accused. The 3rd accused was arrayed. His driving licence was available in the vehicle. So, he was also arrayed as the 3rd

accused. Investigation is in progress. The 2nd accused had come to this Court for anticipatory bail and the said application has been rejected. According to the petitioner, the petitioner is not an accused in the case. Unnecessarily, the petitioner is dragged into the controversy. The petitioner was asked to appear before the Investigating Officer. He did appear. He was detained for a long period of time. His father-in-law came to the office. He was perturbed that there was unnecessary detention. He therefore quarreled with the excise officials. The petitioner was permitted to go on that day. The petitioner apprehends that in view of the aforesaid quarrel, he may be unnecessarily arrested and detained. In these circumstances, it is prayed that appropriate directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor concedes that the petitioner has not been arrayed as an accused; but the petitioner has got to be interrogated. The registered owner has asserted that prior to the date of incident (5/7/07), the vehicle has been transferred to the petitioner on 30/6/07. Therefore the petitioner has to be interrogated to ascertain the truth. It may not be expedient in the interests of justice to permit the petitioner to arm himself

with an order of anticipatory bail at this stage. In these circumstances, this petition may be dismissed, submits the learned Public Prosecutor.

3. The learned counsel for the petitioner alternatively submits that the petitioner may be permitted to appear before the Investigating Officer on any specified date. He shall make himself available for interrogation. If necessary, he may be arrested and produced before the learned Magistrate. But the petitioner may not be left with the apprehension of arrest and the possibility of misuse of the power of arrest. Appropriate directions may be issued obliging the petitioner to appear before the Investigating Officer and make himself available for interrogation by the Investigating Officer.

4. The learned Public Prosecutor raises no objection to that course. In the facts and circumstances of this case, I am satisfied that appropriate directions under Sec.438 of the Cr.P.C. can be issued in favour of the petitioner.

5. In the result, this petition is allowed in part. Following directions are issued under Sec.438 of the Cr.P.C:

(i) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m.

and 5 p.m. on 30/7/07 and 31/7/07. If by such interrogation, the Investigating Officer realises the need to arrest the petitioner, he can be arrested and produced before the learned Magistrate. Appropriate further directions regarding regular bail shall be issued by the learned Magistrate.

(ii) Call this petition again on 1/8/2007 for the Investigating Officer to report whether he has any further objection against the grant of anticipatory bail to the petitioner.

6. Call on 1/8/2007.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge